

**Testimony Regarding HB 4303 to the  
Senate Transportation Committee  
Senator Tom Casperson, Chair**

Presented by  
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**Introduction**

Thank you for the opportunity to provide testimony regarding HB 4303.

Tip of the Mitt Watershed Council, on behalf of its 2,200 plus members, wishes to extend our concern with regards to HB 4303. HB 4303 would amend Part 303 of the Natural Resources Protection Act to specify that the DEQ could NOT impose conditions for mitigation for the impact to wetlands for work under a General Permit and for road work within the right-of-way of the road.

**Assessment of HB 4303**

It is important to consider the crucial functions and values wetlands provide and the historic loss of wetlands within the state when evaluating HB 4303. Wetlands provide many ecological functions that are valuable to our quality of life, including recreational opportunities, flood storage, erosion control, and water quality maintenance. Although the functions and values that wetlands provide make them our most valuable landforms, the United States and Canada have lost alarming amounts of wetland habitats. According to a study by the U.S. Fish and Wildlife Service, the lower 48 states have lost over 53% of their original wetlands. Great Lakes states and the province of Ontario have fared worse – it's estimated that only 30% of the original wetlands remain in the Great Lakes Basin. Michigan has lost approximately one-half of its wetland resources since European settlement; as a result, the remaining wetlands are ecologically indispensable.

Wetlands continue to be converted or degraded every day. Each year, the Michigan Department of Environmental Quality (MDEQ) and the U.S. Army Corps of Engineers (USACE) receive permit applications to authorize activities that further degrade Michigan's wetlands. The vast majority of these permits are issued. On top of this intense pressure, there are numerous other activities that degrade wetlands without any regulatory or protection oversight.

Recognizing the inherent value wetlands hold and the historic loss, Michigan's wetland regulatory program requires a no net loss of wetlands. In an attempt to achieve this goal, mitigation is an important element in wetland regulation. Under our regulatory program, a permit may be issued for a project that will have adverse wetland impacts, provided that steps are taken to minimize the adverse impacts to the aquatic resources and mitigate the loss of wetland area and function.

We are greatly concerned about the impacts the enactment of this bill would have for the protection of our natural resources. This bill would prevent the MDEQ from fulfilling its duty to require mitigation, if wetlands are adversely impacted. This bill would, in essence, remove protection of wetlands for the public interest.

### **Importance of Upholding the Current Regulatory Program**

Not only would the passage of this bill allow for significant destruction of wetlands and not require action to remedy the impacts to the wetlands, it holds the potential to weaken protection for wetlands, inland lakes and streams within the state of Michigan.

HB 4892 would jeopardize Michigan's assumption of the federal wetland program. Michigan has a proud tradition of being one of only two states to administer Section 404 of the Clean Water Act. To keep the authority to administer Section 404, the state must maintain a program that is equivalent to the federal program administered by the Environmental Protection Agency. Broadening state exemptions beyond the specifications of the federal exemptions would reduce the current equivalency standards, therefore, putting the state's assumption in jeopardy.

The state administration the wetland protection program in Michigan offers several benefits in terms of program efficiency and resource protection. These include the following.

#### Increased program efficiency

The state program can reduce the need for duplicative state and federal permits. This can eliminate potentially conflicting permit decisions. One permit process administered by the DEQ provides authorization under all statutes administered by the Water Resources Division including Wetlands, Inland Lakes and Streams, Great Lakes, Environmental Areas, and Floodplain Authority. In addition, it authorizes Section 404 of the Clean Water Act, Section 401 of the Clean Water Act (Water Quality Certification), Coastal Zone Consistency Certification, coordination with endangered species programs, and screening with the federal historic preservation program. All of these authorizations are provided through one permit application and at no additional cost to the permit applicant. Having the federal government administer the program in Michigan will actually result in a duplication of efforts and resources. Applicants will be required to obtain multiple permits from multiple agencies, increasing time and costs. In other states, an applicant must seek these various authorizations on their own, from both state and federal agencies, and this often requires payment for each process separately.

#### Increased timeliness for applicants

State permits are often more timely than federal permits. In Michigan, completed permit applications typically require action within 90 days (150 days if there is a hearing). The average permit processing time is less - approximately 60 days. The U.S. Army Corps of Engineers has no required timeline for permit review and is experiencing considerable time delays, due to backlog and jurisdictional confusion. Some permit applications are taking 600 – 700 days to review. Additionally, prior to processing federal permits,

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jurisdictional determinations (JDs) could be required to determine if the water in question is protected under the Clean Water Act. The current turnaround time for approved JDs is averaging 90 days, the same amount of time it takes the DEQ to typically process a permit. If the wetland program is returned to the federal government, we will likely see job losses in Michigan as a result. In addition to “green” jobs lost by MDEQ employees, other jobs will be lost from delayed or missed business development opportunities due to a lengthy and burdensome federal permit process.

#### Improved resource management

DEQ staff is often more familiar with local resources and the regulated community. The state program offers more staff at local field offices, capable of providing more thorough, on-site reviews for most permit applications. This provides the opportunity to work directly with permit applicants to reduce adverse impacts to the resource.

#### Integration of wetland management with other state water resource program

Administration of the wetland program at the state level encourages integration of wetland regulations with related land and water management programs. Issues such as floodplain management, stormwater management, local or regional zoning or land use plans are more likely to be fully integrated into the permit review process.

#### Increased regulatory program stability

Michigan’s program relies on state, rather than federal law. It is not impacted by changes in the federal program, unless those changes render the state program less stringent than its federal counterpart. Therefore, numerous changes that have resulted in a significant degree of controversy and confusion at the federal level have not directly impacted Michigan’s program (e.g., revision of the delineation manual, rule changes following the Tulloch and SWANCC decisions, and more recently the Rapanos decision and federal guidance).

### **Importance of Protecting Wetlands from a National Perspective**

The ecological and economic importance of intact wetlands goes far beyond benefiting Michigan, the indicators being the inclusion of the need to restore these systems in recent federal legislation. For example, Congress considers appropriations for the Great Lakes Restoration Initiative (GLRI) annually. The GLRI, which has brought millions into the Great Lakes region and Michigan, specifically mention the importance of restoring wetlands. The impetus for this legislation was the Great Lakes Regional Collaboration’s *Strategy to Restore and Protect the Great Lakes*. The plan is the culmination of a historic process initiated by President Bush to craft a strategy to clean up the Great Lakes. Based upon consensus from more than 1,500 local, state, and federal officials, the Tribes, and other Great Lakes advocates, a primary short-term action within the plan is to “restore and protect a net increase 550, 000 acres of wetlands within the Great Lakes Basin.”

HB 4303 creates problems for the federal legislators, Great Lakes governors, private businesses, and non-governmental organizations seeking to secure significant funding for a Great Lakes restoration initiative. Michigan, strategically located in the heart of the

Great Lakes, has the most to gain (and the most to lose) with regard to Great Lakes restoration and protection. HB 4303, by essentially encouraging degradation of wetland systems, makes it hard to argue that Michigan is a deserving recipient of billions of dollars to restore and protect our wetlands.

### **Conclusion**

The DEQ is the key agency responsible to the people of Michigan for protecting Michigan's most treasured resources. In order for the DEQ to live up to its commitment, the legislature must provide the DEQ with the ability to effectively do so. The legislature must realize the importance of maintaining the integrity of Michigan's regulatory wetland program and oppose HB 4303 to ensure that protection of our valuable wetlands remains a priority.

On behalf of the board, staff, and members of Tip of the Mitt Watershed Council, Thank you for the opportunity to share these comments with you.